ELECTRONICALLY FILED

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Attorneys for Plaintiff Energy Brands Inc. d/b/a Glacéau

NOTICE OF VOLUNTARY DISMISSAL

WHEREAS, Energy Brands Inc. d/b/a Glacéau ("Glacéau") commenced the above-entitled action against National Beverage Corp. ("National") by filing a Complaint on May 28, 2008, alleging, *inter alia*, that the trade dress of National's ÀSANTÉ product infringes and dilutes the trade dress of Glacéau's VITAMINWATER® product; and

WHEREAS, on June 2, 2008, Glacéau filed an Amended Complaint in the aboveentitled action adding allegations, *inter alia*, that the use of the phrase "VITAMIN"

WATER" on the label of National's ASANTÉ product infringes and dilutes the VITAMINWATER® trademark: and

WHEREAS, on June 4, 2008, Glacéau filed a motion to dismiss the declaratory judgment complaint filed by National against Glacéau in the United States District Court for the Southern District of Florida, captioned *National Beverage Corp. v. Energy* Brands, Inc. d/b/a Glaceau, No. 08-60792-CIV-ALTONAGA/BROWN (S.D. Fla.) (the "Florida Action"), or, alternatively, to stay or transfer the Florida Action; and

WHEREAS, on July 9, 2008, at the hearing on Glacéau's motion to dismiss the Florida Action, National represented to the Court in the Florida Action that it was going to make a change to its ÀSANTÉ trade dress to the trade dress shown in Exhibit A (the "New ASANTÉ Trade Dress"); and

WHEREAS, the New ASANTÉ Trade Dress does not include the infringing and diluting reference "VITAMIN WATER"; and

WHEREAS, the parties have been engaged in settlement discussions in light of the representations National made on July 9, 2008 concerning the New ASANTÉ Trade Dress; and

WHEREAS, on August 14, 2008, the Court in the Florida Action denied Glacéau's motion;

NOW, THEREFORE, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Glacéau hereby issues and files this Notice of Voluntary Dismissal dismissing the above-entitled action without prejudice.

Dated: August 18, 2008 New York, New York

DEBEVOISE & PLIMPTON LLP

By: /s/ David H. Bernstein
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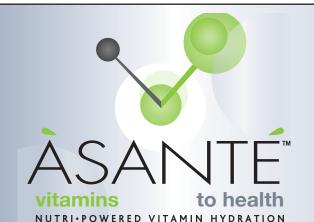
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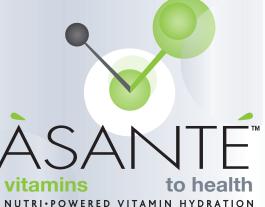
I HEREBY CERTIFY that on August 18, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel or parties of record on the below service list.

> /s/ David H. Bernstein David H. Bernstein

Leslie J. Lott, Esq. Lott & Friedland, P.A. 355 Alhambra Circle **Suite 1100** Coral Gables, Florida 33114 Attorneys for Defendant

EXHIBIT A





REPLENISH

B BITAMINS + ELECTROLYTES

20 FL OZ (591) mL

Arante is deliciously flavored water, enhanced with specific nutrients you need to maintain a healthy balance in your body. Proper hydration is so important, and Arante Replenish is a refreshing alternative with the added bonus of 7 essential vitamins and minerals. To Health!

www.asantewater.com



Nutrition Facts

Serving Size 8 fl oz (240 mL) Servings per Container 2.5

Amount Per Serving

Calories 50 % Daily Value Total Fat Og Sodium Omg Total Carbohydrate 13q

Sugars 13g Protein Og

per serving per bottle Vitamin A Vitamin B3 Magnesium 20mg 5% 50ma 15%

Not a significant source of saturated fat, trans fat,

1.800.323.3416 ©2007 ■ Bleed .0625

1—Trim 3.5 x 9.5

> -Copy Safety .09375

Bidirectional Meet Point 9.0

REPLENISH B BITAMINS + ELECTROLYTES

20 FL OZ (591) mL